



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**PRICE DANIEL
ATTORNEY GENERAL**

January 13, 1948

**Hon. S. C. McIntosh, Director
Gas Utilities Division
Railroad Commission
Austin, Texas**

Opinion No. V-476

**Re: Application of Article
6060, Vernon's Civil
Statutes, to a company
transporting gas from
Texas into Mexico.**

Dear Sir:

This is in further reference to the request contained in your letter of December 16, 1947, for the opinion of this office whether the gross income tax levied by Article 6060, Vernon's Civil Statutes, applies to the operations of Reynosa Pipe Line Company.

From your letter and other information we are advised that the Reynosa Pipe Line Company is a corporation organized under the laws of the State of Texas, with its principal place of business at Corpus Christi, Texas, and is a wholly-owned subsidiary of La Gloria Corporation, another Texas corporation. Under an authorization issued by the Federal Power Commission, pursuant to the provisions of the Natural Gas Act (52 Stat. 831; 15 U.S.C.A. § 717-717w, incl.), Reynosa is delivering to a Mexican corporation at the International Border approximately 20,000 MCF of natural gas per day. This natural gas is purchased by Reynosa from its parent, La Gloria, from reserves in Hidalgo County, Texas, and is transported by Reynosa through its pipe line system approximately 17 miles to the Rio Grande River.

Reynosa makes no sales or deliveries in this State, but, according to a letter from Reynosa accompanying your request, sells to the Mexican company "at the point where the pipe line facilities constructed by Reynosa across and under the Rio Grande River cross the international boundary of the United States of America and the Republic of Mexico."

Article 6060 reads as follows:

"Every gas utility subject to the provisions of this subdivision on or before the first day of January and quarterly thereafter, shall file with the Commission a statement, duly verified as true and correct by the president, treasurer or general manager if a company or corporation, or by the owner or one of them if an individual or co-partnership, showing the gross receipts of such utility for the quarter next preceding or for such portion of said quarterly period as such utility may have been conducting any business, and at such time shall pay into the State Treasury at Austin a sum equal to one-fourth of one per cent of the gross income received from all business done by it within this State during said quarter." (Emphasis Supplied)

Section 10 of Chapter 73 of the Acts of the 42nd Legislature, 1931, reads as follows:

"That Article 6060 of the Revised Civil Statutes of 1925, except insofar as it imposes a license fee or tax of one-fourth of one per cent against persons owning, operating, or managing pipe lines, as provided in section 2 of Article 6050, is hereby repealed and said fund shall be used for enforcing the provisions of Articles 6050 to 6060, inclusive."

Section 2 of Article 6050, referred to, limits the tax to those,

"Owning or operating or managing a pipe line for the transportation or carriage of natural gas, whether for public hire or not, if any part of the right of way for said line has been acquired, or may hereafter be acquired by the exercise of the right of eminent domain; or if said line or any part thereof is laid upon, over or under any public road or highway of this State, or street or alley of any municipality, or the right of way of any railroad or other public utility;

including also any natural gas utility authorized by law to exercise the right of eminent domain."

See Thompson v. United Gas Corporation, 190 S. W. (2d) 504 (Tex. Civ. App. 1945), writ refused.

It will be noted that the tax levied by Article 6060 is based upon a percentage "of the gross income received from all business done by it within this State during said quarter." Thus the question to be determined is whether a pipe line company transporting natural gas in Texas to the United States' border, making sales exclusively at that point, is taxable under the Act, as "business done by (the company) within this State. . . ." Undoubtedly, the sales by the company are sales in foreign commerce. For example of a similar situation held to be interstate and not intrastate commerce, see Interstate Natural Gas Company v. Federal Power Commission (U. S. S. Ct. 1947), 91 L. Ed. 1355.

In an analogous case arising under Article 7084, Vernon's Civil Statutes, it was held that shipments of crude oil originating in Texas destined to points outside the State but transported to seaboard in Texas and loaded on ships in Texas ports did not amount to "business done in Texas" under the statute providing for a franchise tax based on the gross receipts of such business. See Clark v. Atlantic Pipe Line Company, 134 S. W. (2d) 322 (Tex. Civ. App. 1939), writ refused, wherein Chief Justice McClendon said:

"We hold that the language 'business done in Texas,' as employed in this statute was intended to mean business begun and completed in Texas, and not business begun in Texas and completed in some other state or foreign nation, or vice versa. In other words, that it means intrastate business."

See also Flowers v. Pan American Refining Corporation, 154 S. W. (2d) 982, writ refused; and Lawson v. Petroleum Nav. Co., 170 S. W. (2d) 571.

The holdings in these cases are based in part upon Houston B. & T. Ry. Co. v. State, 108 Tex. 314, 192 S. W. 1054, and like cases by the United States Supreme Court, to the effect that a state gross receipts tax on receipts from interstate and foreign commerce is unconstitutional.

Your attention is also invited to East Ohio Gas Company v. Tax Commission of Ohio, et al, 283 U. S. 465, 51 S. Ct. 499, wherein the court held that:

"The transportation of gas from wells outside Ohio by the lines of the producing companies to the state line and thence by means of appellant's high pressure transmission lines to their connection with its local systems is essentially national--not local--in character and is interstate commerce within as well as without that state. The mere fact that the title or the custody of the gas passes while it is en route from state to state is not determinative of the question where interstate commerce ends."

In our opinion the activities of Reynosa Pipe Line Company as described in this opinion are not taxable under Article 6060, Vernon's Civil Statutes.

SUMMARY

A Texas natural gas pipe line company engaged exclusively in purchasing and transporting gas in Texas for sale in foreign commerce is not subject to the gross income tax levied by Article 6060, Vernon's Civil Statutes.

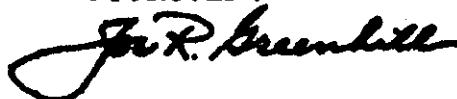
Yours very truly

ATTORNEY GENERAL OF TEXAS

By 
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JDS:jt

APPROVED:



ACTING ATTORNEY GENERAL